



## LODI CITY COUNCIL

Carnegie Forum

305 West Pine Street, Lodi

## AGENDA – SPECIAL MEETING

Date: March 29, 2006

Time: 6:00 p.m.

For information regarding this Agenda please contact:

**Susan J. Blackston**

**City Clerk**

**Telephone: (209) 333-6702**

*NOTE: All staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the Office of the City Clerk and are available for public inspection. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation contact the City Clerk's Office as soon as possible and at least 24 hours prior to the meeting date.*

### **ADDENDUM**

**Subsequent to the publication and posting of the agenda on March 24, 2006,  
the following item was submitted for Council consideration.**

- D-8 Authorize the City Manager to execute a lease agreement between the County of San Joaquin and the City of Lodi to relocate Lodi Superior Courtroom No. 1 to the new police building and an assignment agreement between the State of California Administrative Office of Courts (AOC), the County of San Joaquin, and the City of Lodi assigning the lease to the AOC after completion of construction (CA)

Pursuant to Section 54954.2(a) of the Government Code of the State of California, this Agenda was posted at least 72 hours in advance of the scheduled meeting at a place freely accessible to the public 24 hours a day.

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Susan J. Blackston  
City Clerk



## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Authorize City Manager to execute "Lease Agreement" between the County of San Joaquin and the City of Lodi to relocate Lodi Superior Courtroom No. 1 to the new police building and the "Assignment Agreement" between the State of California Administrative Office of Courts ("AOC"), the County of San Joaquin and the City of Lodi, assigning the lease to the AOC after completion of construction.

**MEETING DATE:** March 29, 2006 Special Joint Meeting of Lodi City Council and Redevelopment Agency

**PREPARED BY:** City Attorney

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**RECOMMENDED ACTION:** Authorize City Manager to execute "Lease Agreement" between the County of San Joaquin and the City of Lodi to relocate Lodi Superior Courtroom No. 1 to the new police building and the "Assignment Agreement" between the State of California Administrative Office of Courts ("AOC"), the County of San Joaquin and the City of Lodi, assigning the lease to the AOC after completion of construction.

**BACKGROUND INFORMATION:** Staff has negotiated the attached lease between the County and the City to move Lodi Superior Courtroom No. 1 from the Old Public Safety Building to the vacant space on the second floor of the Police Station. The lease provides for a fifteen-year term with rent payments starting upon the completion of the County's tenant improvements or 14 months from the execution of the lease, whichever occurs first. Rent is set at \$194,205 per year (\$1.35 per square foot per month base lease and \$0.77 per square foot per month for services). Rent will be annually indexed according to the San Francisco Consumer Price Index but bracketed between 2.5 and 5 percent. In year 6 the lease will be adjusted via appraisal to market rate, not to exceed 229,440 per year for base rent (\$2.50 per square foot per month) plus the service costs set forth above. The assignment Agreement simply requires the City to acknowledge and consent that the agreement will be assigned from the County to the State Administrative Office of Courts after completion of the tenant improvements.

**FISCAL IMPACT:** Approximately \$619,488 over five years in rent revenue, and the possible elimination of \$219,216 in annual rent fees paid for finance office space.

**FUNDING AVAILABLE:** Not Applicable.

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Steve Schwabauer, City Attorney

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APPROVED: \_\_\_\_\_  
Blair King, City Manager

## LEASE AGREEMENT

A-06-\_\_\_\_\_

This lease is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between the COUNTY OF SAN JOAQUIN, a political subdivision of the State of California ["COUNTY"], and the CITY OF LODI ["CITY"].

WHEREAS, COUNTY and CITY are presently parties to an Agreement for the Operation of the Lodi Public Safety/Court Building, whereby COUNTY occupies a building located at 230 West Elm Street in Lodi, California, for the purpose of operating a court facility for the Superior Court of California, County of San Joaquin, commonly known as Lodi Branch Court Department 1 ["Old LD 1"]; and

WHEREAS, pursuant to the Trial Court Facilities Act of 2002, COUNTY is obligated to transfer responsibility for the funding and operation of Old LD 1 to the Judicial Council of California, Administrative Office of the Courts ["AOC"], on or before June 30, 2007, which transfer may be accomplished by an agreement which incorporates the assignment of a lease agreement from COUNTY to AOC; and

WHEREAS, COUNTY, CITY and AOC desire to relocate Old LD 1 to the second floor of the City of Lodi Police Building, located at 215 West Elm Street in Lodi, California ["New LD 1"]; and

WHEREAS, COUNTY and CITY desire to enter into a lease agreement for New LD 1 contingent upon the understanding that said lease agreement will be assigned to AOC pursuant to a Transfer Agreement Between the Judicial Council of California, Administrative Office of the Courts, and the County of San Joaquin, of approximately even date herewith ["Transfer Agreement"].

THEREFORE, IT IS EXPRESSLY AGREED by and between CITY and COUNTY that CITY hereby leases to COUNTY those certain premises together with all appurtenances, rights, privileges, and easements thereunto belonging or appertaining, commonly known as City of Lodi Police Building, 215 West Elm Street, Second Floor, Lodi, California 95240, under the following terms and conditions:

### 1. TERM

Lease will commence upon the date stated above and will terminate 15 years after COUNTY begins paying rent pursuant to Paragraph 2(b), below.

## 2. RENT

- a. CITY shall continue to allow COUNTY and/or AOC to occupy Old LD 1, located at 230 West Elm Street in Lodi, California, and COUNTY shall continue to reimburse CITY for its share of operating costs there, as stipulated by the existing Agreement for the Operation of the Lodi Public Safety/Court Building, until completion of the tenant improvements and issuance of the Certificate of Occupancy for New LD 1.
- b. No rent shall be required to be paid until the tenant improvements described in Paragraph 3, below, are completed and a Certificate of Occupancy for the premises is issued by CITY, or 14 months from the lease commencement date stated above, whichever is earlier. Upon completion of the tenant improvements and issuance of the Certificate of Occupancy, or 14 months from the lease commencement date, whichever is earlier, COUNTY shall pay annual rent (Year 1) in the amount of \$194,205.00 (which is the equivalent of \$1.35 per square foot per month for the estimated 7,648 square foot New LD 1 plus an approximately \$0.77 per square foot allowance for operational services). COUNTY's annual payment shall increase by 2.5% each year for Years 2 through 5 of this lease agreement.
- c. No later than six (6) months prior to the commencement of Year 6 of this lease agreement, CITY shall obtain a formal appraisal to determine the fair rental value for New LD 1 for Year 6 of this lease agreement. COUNTY and CITY must agree upon a new annual rental, which amount will not exceed \$229,440.00 for base rent (which is the equivalent of \$2.50 per square foot per month for the estimated 7,648 square foot New LD 1) plus an allowance for operational services. The allowance for operational services referred to in the prior sentence is an amount equal to the allowance for operational services set forth in Paragraph 2.b above as adjusted by the annual percentage change of the CPI Index (defined in Paragraph 2.d below) through the date of the reappraisal; provided, however, that the annual percentage change of the CPI Index for any given year will not be less than 2.5% and not be greater than 5% per year. Should COUNTY and CITY fail to agree upon a new annual rental amount, COUNTY and CITY agree to participate in formal mediation and, if subsequently necessary, binding arbitration before a neutral third party to establish the new annual rental amount. Nothing in this paragraph shall restrict or prevent COUNTY from obtaining its own independent appraisal of fair rental value for purposes of negotiation, mediation or arbitration.

- d. COUNTY's annual payment shall increase each year for Years 7 through 15 of this lease agreement based upon the annual percentage change of the Consumers Price Index for All Urban Consumers (All Items), San Francisco-Oakland-San Jose Average, as published by the United States Department of Labor Statistics ("CPI Index"), for the month prior to the date the payment is due. Notwithstanding the foregoing, for any given year, COUNTY's annual rental payment shall increase by no less than 2.5%, and no more than 5.0%, per year.
- e. COUNTY's annual rental payment as required by this paragraph shall be paid in arrears in equal monthly installments at the end of each month. Payments shall be mailed to City of Lodi, Attn: Finance Director, PO Box 3006, Lodi, Ca 95241-1910.
- f. COUNTY and CITY expressly agree and understand that any and all payments required under this Paragraph 2 shall be paid exclusively from the Courthouse Construction Fund maintained by San Joaquin County.

### 3. TENANT IMPROVEMENTS

Tenant improvements for a courtroom equipped for use as a criminal court shall be provided for and funded by COUNTY with Courthouse Construction Fund monies. Construction of tenant improvements shall commence upon issuance of a building permit by CITY. CITY may also agree to provide construction management services for the completion of tenant improvements in a separate agreement with COUNTY.

Tenant improvements shall be constructed in similar form and content to those certain plans referred to as the Pricing and Permit Set, dated January 11, 2005, and shall include, but not be limited to, the following components:

- a. One trial courtroom, with one attorney witness room and one file storage room.
- b. One public lobby and public restrooms.
- c. Holding for in-custody defendants with one single-occupant cell, one interview booth, two group holding cells and secure circulation to the courtroom and to ground floor holding/sallyport.
- d. Office space, judge's chamber, jury deliberation room.
- e. All mechanical, electrical, telecommunications, and utilities required to support the above spaces and functions.

### 4. OPERATIONAL SERVICES

- a. In consideration for rental payments being made by COUNTY under Paragraph 2 of this lease agreement, CITY will provide the following maintenance, operation,

and repair services to the premises as described below during the term of this lease agreement at its sole cost and expense:

- i. Maintenance and repair of exterior landscaping and building walls and roof;
  - ii. Maintenance and repair of building systems, such as plumbing, electrical, heat, air conditioning and ventilation, but not including building systems installed by COUNTY per Paragraph 3 (except as provided in subsection viii below).
  - iii. Water, natural gas, electricity, wastewater and refuse utility services;
  - iv. Janitorial services, supplies, and carpet cleaning;
  - v. Elevator maintenance and minor repairs (including the secured elevator used to transfer inmates to and from New LD 1);
  - vi. Security and fire alarm service and fire extinguisher maintenance;
  - vii. Pest control (if required); and
  - viii. Maintenance and minor repairs to the New LD 1 premises, including minor repairs to the heating, ventilation, and air-condition system installed by COUNTY per Paragraph 3 above.
- b. CITY will provide the services set forth in Paragraph 4.a above (which are the operational services referred to in Paragraphs 2.b and 2.c above) for New LD 1, including the adjacent lobby and public access area, commensurate with the frequency and other standards of service as used in the Lodi City Hall. As used in Paragraph 4.a above, "minor repairs" means single system repairs which cost \$3,000 or less for labor and materials. Repairs which cost over \$3,000 will be paid by COUNTY. CITY shall cooperate in obtaining estimates and facilitating work requested by COUNTY and shall not contract for repairs costing more than \$3,000 without the prior consent of COUNTY.
- c. CITY shall provide operational services (including air conditioning and heat) all in such reasonable quantities as is reasonably necessary for the comfortable occupancy of New LD 1, from 7:00 a.m. to 6:00 p.m. Mondays through Fridays and 9:00 a.m. to 1:00 p.m. on Saturdays, excepting local and national holidays. COUNTY will cooperate with CITY and its contractors in providing reasonable access to New LD 1 during these hours without disrupting court proceedings.

5. PARKING

CITY shall provide one (1) secure parking space, reserved for use by the judge of the Court.

6. COMMON AREAS

CITY shall maintain all interior and exterior common areas of the building at its own expense, except as expressly provided otherwise herein.

7. DESTRUCTION OF PREMISES

In the event that New LD 1 is totally destroyed by any causes whatsoever prior to the commencement of or during the term of this lease agreement, this lease agreement shall immediately terminate and no party shall have any rights or be under further obligation, except for rent accrued prior to destruction. CITY shall refund to COUNTY any unearned rent. Total destruction shall be defined as any destruction sufficient to make New LD 1 no longer suitable for the conduct of business as intended by this lease agreement.

In the event that New LD 1 is partially destroyed by any cause whatsoever, CITY, with reasonable promptness, shall repair and rebuild same provided that it may be repaired and rebuilt under State and Municipal laws and regulations within ninety (90) working days, and COUNTY shall pay rent during such period of repair or rebuilding in proportion to the square footage of New LD 1 actually being occupied and used by COUNTY. In the event of partial destruction of New LD 1, COUNTY shall be responsible for reconstruction or replacement of the tenant improvements identified in Section 3, above.

8. ASSIGNMENT AND SUBLETTING

COUNTY may assign all of its rights under this lease agreement to the AOC. COUNTY and CITY agree and understand that execution of this lease agreement by COUNTY is expressly contingent upon its subsequent transfer and assignment to the AOC. COUNTY and CITY further agree and understand that, subsequent to the transfer and assignment of this lease agreement to the AOC, all references to "COUNTY" in Paragraphs 1 through 18 hereof, shall refer and apply exclusively to the AOC. COUNTY shall not otherwise assign or sublet the whole or part of New LD 1 without first having obtained the written consent of CITY. Such consent shall not be unreasonably withheld.

9. TERMINATION

If, for any reason, COUNTY is unable to transfer responsibility for and assign this lease agreement to AOC within six (6) months of the issuance of the Certificate of Occupancy for

New LD 1, CITY or COUNTY may terminate this lease agreement upon thirty (30) days written notice.

#### 10. ENTRY BY CITY

CITY may enter the New LD 1 with consent of COUNTY or upon written notice to COUNTY (twenty-four (24) hours shall be deemed reasonable advance notice) for the purposes of reasonable inspection, making repairs, alteration or additions, to show the premises to prospective purchasers, or mortgagees, or any other valid and reasonable business purpose. Entry shall be made during regular business hours. In the event of any emergency such as a fire, CITY may enter New LD 1 without consent or prior notice. COUNTY may re-key the locks to any or all interior doors of New LD 1 at any time, provided that COUNTY provides a copy of new keys to CITY for fire safety purposes. COUNTY may re-key the locks to any or all exterior access doors with CITY's consent, which shall not be unreasonably withheld.

#### 11. WAIVER AND SEVERABILITY

No waiver by either party at any time of any of the terms, conditions, covenants, or agreements of this lease agreement shall be deemed or taken as a waiver at any time thereafter of any of the same, nor of the strict and prompt performance thereof by the other party. If any provision of this lease agreement shall be adjudged invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this lease agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

#### 12. SURRENDER OF PREMISES

COUNTY agrees at the expiration of this lease agreement or upon the earlier termination thereof for any reason, to quit and surrender the premises to CITY in as good state and condition as New LD 1 is in when possession thereof is given to COUNTY, reasonable wear and tear and damage by the elements and acts of God excepted, and COUNTY agrees at the expiration of the lease term or earlier termination thereof to remove any and all signs that have been placed upon, in or about New LD 1 by COUNTY and to repair and restore New LD 1 to the same condition prior to the time of placing of said signs upon, reasonable wear and tear and damage by the elements excepted. COUNTY agrees that, at any time after ninety (90) days prior to the termination of this lease agreement, CITY may place thereon any usual or ordinary "To Let" or "To Lease" or "For Sale" signs.

#### 13. DEFAULT AND REMEDIES

a. Upon the occurrence of an event of default under this lease agreement, CITY may exercise all of its remedies as may be permitted by law, including but not limited to the remedy provided by Section 1951.4 of the California Civil Code, and including without limitation, terminating this lease agreement. If CITY elects to terminate this lease agreement, CITY shall



be entitled to recover from COUNTY the aggregate of all amounts permitted by law, including but not limited to (i) the worth at the time of award of the amount of any unpaid rent which had been earned at the time of such termination; plus (ii) any other amount necessary to compensate CITY for all the detriment proximately caused by COUNTY's failure to perform its obligations under this lease agreement or which in the ordinary course of things would be likely to result therefrom, specifically including but not limited to, tenant improvement expenses, brokerage commissions and advertising expenses incurred; and (iii) at CITY's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law. The term "rent" as used in this Paragraph 13(b) shall be deemed to be and to mean all sums of every nature required to be paid by COUNTY pursuant to the terms of this lease agreement, whether to CITY or to others.

b. Notwithstanding anything to the contrary set forth herein, CITY's acts of maintenance or preservation in connection with efforts to re-let New LD 1 or any portion thereof, or the appointment of a receiver upon CITY's initiative to protect CITY's interest under this lease agreement, shall not terminate COUNTY's right to possession of New LD 1 or any portion thereof and, until CITY does elect to terminate this lease agreement, this lease agreement shall continue in full force and effect and CITY may enforce all of CITY's rights and remedies hereunder including, without limitation, the remedy described in California Civil Code Section 1951.4.

c. Whether or not CITY elects to terminate this lease agreement on account of any default by COUNTY, CITY shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by COUNTY and affecting New LD 1 or may, in CITY's sole discretion, succeed to COUNTY's interest in such subleases, licenses, concessions or arrangements. In the event of CITY's election to succeed to COUNTY's interest in any such subleases, licenses, concessions or arrangements, COUNTY shall, as of the date of notice by CITY of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

d. CITY shall not be in default under this lease agreement unless CITY fails to perform obligations required of CITY within fifteen (15) days after written notice is delivered by COUNTY to CITY and to the holder of any mortgages or deeds of trust (collectively, "**Lender**") covering the Premises whose name and address shall have theretofore been furnished to COUNTY in writing, specifying the obligation which CITY has failed to perform; provided, however, that if the nature of CITY's obligation is such that more than fifteen (15) days are required for performance, then CITY shall not be in default if CITY or Lender commences performance within such fifteen (15) day period and thereafter diligently prosecutes the same to completion.

e. Notwithstanding any provisions to the contrary herein, CITY shall not under any circumstance have the right to accelerate any rent that falls due in future rental periods or otherwise declare any rent not then in default to be immediately due and payable.

f. COUNTY shall not be in default under this lease agreement unless COUNTY fails to perform obligations required of COUNTY within fifteen (15) days after written notice is delivered by CITY, specifying the obligation which COUNTY has failed to perform; provided, however, that if the nature of COUNTY's obligation is such that more than fifteen (15) days are required for performance, then COUNTY shall not be in default if COUNTY commences performance within such fifteen (15) day period and thereafter diligently prosecutes the same to completion.

#### 14. NOTICES

Any demand or notice which either party shall be required or may desire to make upon or give the other shall be in writing and shall be delivered personally to the other or sent by registered mail addressed to the respective parties, as follows:

CITY: Lodi City Manager  
P.O. Box 3006  
Lodi, CA 95241

COUNTY: San Joaquin County  
222 E. Weber Avenue, Room 707  
Stockton, CA 95202

With copy to:

San Joaquin County  
Facilities Management Division  
212 N. San Joaquin Street, Suite A  
Stockton, CA 95202

Notice by registered mail shall be deemed to have been communicated twenty-four (24) hours from the time of mailing.

#### 15. INSURANCE

No use shall be made of New LD 1 which will increase the commercial rate of insurance upon the building or cause a cancellation of any insurance policy covering said building; provided, however, that the CITY hereby acknowledges and agrees that the COUNTY's use of New LD 1 as a criminal court facility will not cause an increase in the rate or a cancellation of any insurance policy covering the building. Additionally, COUNTY shall not keep in New LD 1 any articles which may be prohibited by the standard form fire insurance policies. In recognition of the Self Insurance policy of the County of San Joaquin, this lease agreement shall not require COUNTY to obtain commercially available insurance for activities arising out of

COUNTY'S use of New LD 1. COUNTY shall retain any and all liabilities to third parties and indemnity obligations to CITY that may otherwise arise under California law.

16. ASBESTOS AND SEISMIC CLEARANCE

Prior to occupancy of New LD 1 by COUNTY, CITY shall disclose any unsafe conditions as well as any existing asbestos or seismic issues known to CITY. COUNTY shall be entitled to terminate this lease agreement as a result of any existing asbestos or seismic issues not corrected by CITY. If, after a thirty (30) day period, COUNTY has not rejected New LD 1, it will be deemed approved.

17. SIGNS

COUNTY may install interior and exterior signage to indicate court operations. Designs for such signage shall be consistent with the style and design of the existing building and shall be submitted to CITY for review and approval.

18. ENTIRE AGREEMENT

This lease agreement supersedes all prior agreements between the parties and, including attachments and incorporated documents, constitutes the entire contract. It is intended as the final expression of the agreement between the parties with respect to such terms as are included herein and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The parties further intend that, except as provided herein with respect to the Transfer Agreement between COUNTY and AOC, the Memorandum of Understanding Regarding Lodi Branch – Dept. 1 Court Facility between COUNTY and AOC, and the existing Agreement for the Operation of the Lodi Public Safety/Court Building, this lease agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding.

IN WITNESS WHEREOF, CITY AND COUNTY have each caused this lease to be executed on the date first written above.

CITY OF LODI,  
a municipal corporation

COUNTY OF SAN JOAQUIN,  
a political subdivision of the State of  
California

By: \_\_\_\_\_  
BLAIR KING, City Manager

By: \_\_\_\_\_  
DARIO MARENCO, Chairman  
Board of Supervisors

ATTEST: SUSAN BACKSTON, City Clerk

ATTEST: LOIS M. SAYHOUN  
Clerk of the Board of Supervisors of the  
County of San Joaquin, State of California

By \_\_\_\_\_ (SEAL)

By \_\_\_\_\_ (SEAL)

Approved as to content:

MANUEL LOPEZ  
County Administrator

By: \_\_\_\_\_  
VICTOR SINGH  
Assistant County Administrator

Approved as to form:

\_\_\_\_\_  
D. STEPHEN SCHWABAUER  
City Attorney

Approved as to form:

TERRENCE R. DERMODY  
County Counsel

By: \_\_\_\_\_  
DAVID WOOTEN  
Assistant County Counsel